

available units except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g. prohibition on use of ineligible housing, housing not meeting HQS, or housing for which the contract rent (certificate program) or rent to owner (voucher program) exceeds a reasonable rent).

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 61 FR 42131, Aug. 13, 1996]

**§ 982.354 Portability: Administration by initial HA outside the initial HA jurisdiction.**

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial HA jurisdiction, the initial HA must administer assistance for the family if:

(1) The unit is located within the same State as the initial HA, in the same metropolitan statistical area (MSA) as the initial HA (but in a different State), or in an MSA that is next to the same MSA as the initial HA (but in a different State); and

(2) No other HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b) In these conditions, the family remains in the program of the initial HA. The initial HA has the same responsibilities for administration of assistance for the family living outside the HA jurisdiction as for other families assisted by the HA, within the HA jurisdiction. For the purpose of permitting HA administration of program assistance for the family in the area outside of the HA jurisdiction as defined by State and local law (and thereby to satisfy the family's right to portability under federal law), the federal law and this regulation preempt limits on the HA jurisdiction under State and local law.

(c) The initial HA may choose to use another HA, a private management entity or other contractor or agent to help the initial HA administer assistance outside the HA jurisdiction as defined by State and local law.

**§ 982.355 Portability: Administration by receiving HA.**

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial HA juris-

diction, another HA (the "receiving HA") must administer assistance for the family if an HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b)(1) In these conditions, an HA with jurisdiction in the area where the family wants to lease a unit must issue the family a certificate or voucher. If there is more than one such HA, the initial HA may choose the receiving HA.

(2) If the family was receiving assistance under the initial HA certificate program, but is ineligible for admission to the voucher program, a receiving HA must provide continued assistance under the certificate program. If the family was receiving assistance under the initial HA voucher program, but is ineligible for admission to the certificate program, a receiving HA must provide continued assistance under the voucher program.

(3) If a receiving HA is absorbing the family into its own program (i.e., providing assistance without billing the initial HA), the receiving HA has the choice of assisting the family under either the certificate or voucher program. If a receiving HA is not absorbing the family into its own program, the receiving HA must assist the family under the same program (certificate program or voucher program) as the initial HA.

(c) *Portability procedures.* (1) The initial HA must determine whether the family is income-eligible in the area where the family wants to lease a unit.

(2) The initial HA must advise the family how to contact and request assistance from the receiving HA. The initial HA must promptly notify the receiving HA to expect the family.

(3) The family must promptly contact the receiving HA, and comply with receiving HA procedures for incoming portable families.

(4) The initial HA must give the receiving HA the most recent HUD Form 50058 (Family Report) for the family, and related verification information. If the receiving HA opts to conduct a new reexamination, the receiving HA may not delay issuing the family a voucher or certificate or otherwise delay approval of a unit unless the recertification is necessary to determine income eligibility.

(5) When the portable family requests assistance from the receiving HA, the receiving HA must promptly inform the initial HA whether the receiving HA will bill the initial HA for assistance on behalf of the portable family, or will absorb the family into its own program.

(6) The receiving HA must issue a certificate or voucher to the family. The term of the receiving HA certificate or voucher may not expire before the expiration date of any initial HA certificate or voucher. The receiving HA must determine whether to extend the certificate or voucher term. The family must submit a request for lease approval to the receiving HA during the term of the receiving HA certificate or voucher.

(7) The receiving HA must determine the family unit size for the portable family. The family unit size is determined in accordance with the subsidy standards of the receiving HA.

(8) The receiving HA must promptly notify the initial HA if the family has leased an eligible unit under the program, or if the family fails to submit a request for lease approval for an eligible unit within the term of the certificate or voucher.

(9) To provide tenant-based assistance for portable families, the receiving HA must perform all HA program functions, such as reexaminations of family income and composition. At any time, either the initial HA or the receiving HA may make a determination to deny or terminate assistance to the family in accordance with § 982.552.

(d) *Absorption by the receiving HA.* (1) If funding is available under the consolidated ACC for the receiving HA certificate or voucher program when the portable family is received, the receiving HA may absorb the family into the receiving HA certificate or voucher program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving HA tenant-based program.

(2) HUD may require that the receiving HA absorb all or a portion of the portable families.

(e) *Portability Billing.* (1) To cover assistance for a portable family, the receiving HA may bill the initial HA for housing assistance payments and ad-

ministrative fees. This paragraph (e) describes the billing procedure.

(2) The initial HA must promptly reimburse the receiving HA for the full amount of the housing assistance payments made by the receiving HA for the portable family. The amount of the housing assistance payment for a portable family in the receiving HA program is determined in the same manner as for other families in the receiving HA program.

(3) The initial HA must promptly reimburse the receiving HA for 80 percent of the initial HA on-going administrative fee for each unit month that the family receives assistance under the tenant-based programs from the receiving HA. If both HAs agree, the HAs may negotiate a different amount of reimbursement.

(4) HUD may reduce the administrative fee to an initial or receiving HA if the HA does not comply with HUD portability requirements.

(5) In administration of portability, the initial HA and the receiving HA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving HA must comply with billing and payment deadlines under the financial procedures.

(6) An HA must manage the HA tenant-based programs in a manner that ensures that the HA has the financial ability to provide assistance for families that move out of the HA program under the portability procedures that have not been absorbed by the receiving HA, as well as for families that remain in the HA program.

(7) When a portable family moves out of the tenant-based program of a receiving HA that has not absorbed the family, the HA in the new jurisdiction to which the family moves becomes the receiving HA, and the first receiving HA is no longer required to provide assistance for the family.

(f) *Portability funding.* (1) HUD may transfer funds for assistance to portable families to the receiving HA from funds available under the initial HA ACC.

(2) HUD may provide additional funding (e.g., funds for incremental units) to the initial HA for funds transferred

to a receiving HA for portability purposes.

(3) HUD may provide additional funding (e.g., funds for incremental units) to the receiving HA for absorption of portable families.

(4) HUD may require the receiving HA to absorb portable families.

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996]

### Subpart I—Dwelling Unit: Housing Quality Standards, Subsidy Standards, Inspection and Maintenance

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

#### § 982.401 Housing quality standards (HQS).

(a) *Performance and acceptability requirements.* (1) This section states the housing quality standards (HQS) for housing assisted in the programs.

(2)(i) The HQS consist of:

(A) Performance requirements; and

(B) Acceptability criteria or HUD approved variations in the acceptability criteria.

(ii) This section states performance and acceptability criteria for these key aspects of housing quality:

(A) Sanitary facilities;

(B) Food preparation and refuse disposal;

(C) Space and security;

(D) Thermal environment;

(E) Illumination and electricity;

(F) Structure and materials;

(G) Interior air quality;

(H) Water supply;

(I) Lead-based paint;

(J) Access;

(K) Site and neighborhood;

(L) Sanitary condition; and

(M) Smoke detectors.

(3) All program housing must meet the HQS performance requirements both at commencement of assisted occupancy, and throughout the assisted tenancy.

(4)(i) In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria stated in this section, unless variations are approved by HUD.

(ii) HUD may grant approval for the HA to use acceptability criteria variations that are based on local codes or national standards that satisfy the purposes of the HQS.

(iii) HUD may approve acceptability criteria variations because of local climatic or geographic conditions.

(iv) HUD will not approve acceptability criteria variations that will unduly limit the amount and types of available rental housing stock.

(b) *Sanitary facilities*—(1) *Performance requirements.* The dwelling unit must include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.

(2) *Acceptability criteria.* (i) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition.

(ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water.

(iii) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water.

(iv) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).

(c) *Food preparation and refuse disposal*—(1) *Performance requirement.* (i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.

(ii) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) *Acceptability criteria.* (i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and